



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

**CP (IB) 580/MB/2020**

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*In the matter of*

**Ahmednagar Merchant's Co-operative Bank Limited**

Having registered office at: - Plot No.33, Market Yard, Station Road, Ahmednagar, Maharashtra-414001.

**..... Applicant/ Financial Creditor**

**Versus**

**Kohinoor Ginning and Pressing Private Limited**

Having registered office at: - Gat No. 37/2, At post Ghogargaon, Taluka-Shrigonda, Ahmednagar, Maharashtra-414401.

**..... Corporate Debtor**

**Order Delivered on :- 02.11.2023**

***Coram:***

**Smt. Anuradha Sanjay Bhatia  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**



***Appearances:***

For the Financial Creditor: Mr. Sureshkumar R. Firodiya.

For the Corporate Debtor: None Appeared.

**ORDER**

***Per: - Kuldip Kumar Kareer, Member Judicial***

1. This Company petition is filed by Ahmednagar Merchant's Co-operative Bank Limited (hereinafter called as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Kohinoor Ginning and Pressing Private Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a total unresolved Financial Debt of Rs. 12,07,81,801.85/- (Rupees Twelve Crores, Seven Lakhs, Eighty-One Thousand, Eight Hundred and One and Eighty-Five Paise Only) as on 31<sup>st</sup> January, 2020.

**The submissions of the Financial Creditor are as follows:**

2. The Financial Creditor is a co-operative society, registered under the Maharashtra Co-operative Societies Act, 1960. The Financial Creditor is carrying on business of banking, duly licensed by the Reserve Bank of India and is having branches at various places. The Corporate




Debtor is a private limited company incorporated and registered under the Companies Act, 1956 and the same is also registered as SSI Unit [Small Scale Industry ('SSI')] with the Directorate of Industries. The Corporate Debtor is engaged in the business of automated cotton ginning and pressing along with oil mill. The main product of the company is Lint Cotton Bails with Cotton Seeds, Cotton Seeds Cake and Cotton Seeds Oil.

3. The Corporate Debtor through its directors said Shantilal Pruthviraj Luniya and Smt. Lata Shantilal Luniya have approached the Financial Creditor and requested it to grant a loan to Corporate Debtor for the purpose of repayment of high cost loan borrowed from Bank of Baroda, Ahmednagar and also for the purpose of working capital requirement of its business. Therefore, deceased Shantilal Pruthviraj Luniya and Smt. Lata Shantilal Luniya had initially approached the Financial Creditor and requested it to finance a sum of Rs.15,00,00,000/- for the aforesaid purposes. The Financial Creditor as well as Nagar Urban Co-operative Bank, Ahmednagar have accordingly considered the request of the Corporate Debtor and have agreed to sanction the consortium loan of INR 13,98,00,000/- (Rupees Thirteen Crores and Ninety-Eight Lakhs Only) to the Corporate Debtor.

4. The details of loan granted to the Corporate Debtor under consortium agreement dated 15.12.2015 are as follows:

**A) BY THE FINANCIAL CREDITOR**

- i. SSI Hypothecation Loan of INR 6,50,00,000/- (Rupees Six Crores and Fifty Lakhs Only); and


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- ii. SSI Term Loan of INR 1,30,00,000/- (Rupees One Crore and Thirty Lakhs Only); and
  - iii. Machinery Loan of INR 1,18,00,000/- (Rupees One Crore and Eighteen Lakhs Only).

Making a total of INR 8,98,00,000/- (Rupees Eight Crores and Ninety Eight Lakhs Only) to the Corporate Debtor and issued sanction letter dated 31.10.2015 to the Corporate Debtor.

**BY THE NAGAR URBAN CO-OPERATIVE BANK**


SSI working capital term loan of Rs.5,00,00,000/- (Rupees Five Crores Only) to the Corporate Debtor and issued sanction letter dated 28<sup>th</sup> October, 2015 to Corporate Debtor.

5. It was agreed between the Financial Creditor and Nagar Urban Co-operative Bank, Ahmednagar that the Nagar Urban Co-operative Bank, Ahmednagar should disburse the said loan amount to the Corporate Debtor through transferring the said amount to the Financial Creditor for crediting the same in the account of Corporate Debtor. Thus, the consortium loan of Rs.13,98,00,000/- (Rupees Thirteen Crores and Ninety-Eight Lakhs only) has been sanctioned to the Corporate Debtor by the Financial Creditor and accordingly, the said amount has been also disbursed by Financial Creditor to Corporate Debtor. The said Hypothecation Loan of INR 6,50,00,000/- (Rupees Six Crores and Fifty Lakhs Only) was to be repaid to the Financial Creditor within a period of one year. However, at the discretion of the Financial Creditor, the said loan could be renewed for another period of one more year if proper application along with proper documents were submitted by the Corporate Debtor. Accordingly, at the request of the Corporate Debtor, the said hypothecation loan was renewed for



a further period of one year. Lastly, the same was renewed on 31.03.2017 for the period of one year. The SSI term loan of Rs. 1,30,00,000/- (Rupees One Crore and Thirty Lakhs only) was repayable by the Corporate Debtor within a period of 5 years by 60 monthly instalments of Rs.2,16,700/- each and the Machinery Loan of INR 1,18,00,000/- (Rupees One Crore and Eighteen Lakhs Only) repayable within a period of 8 years by 96 monthly instalments of Rs. 1,23,000/- each. It is agreed that time for payment of monthly instalment and monthly interest regularly is the essence of contract.

6. The monthly installments of the aforesaid loan amount were payable w.e.f. 10.01.2016. The Corporate Debtor agreed to pay interest on the said amount @ 15.5% p.a. to the Financial Creditor with monthly rest and interest is payable on or before 10<sup>th</sup> of the next month. The Corporate Debtor also agreed that the said rate of interest was liable to change as per decision of Board of Directors of the Financial Creditor. It was also agreed that the time for payment of monthly interest as well as monthly installment is the essence of contract. It was also agreed that in case the Corporate Debtor makes default in payment of any three installments, an additional Interest @ 2% p.a. is payable on defaulted amount till its repayment and in case, the Corporate Debtor fails to pay more than 3 Installments, additional interest @ 2% p.a. is payable on the entire loan. At present the rate of Interest is 14% p.a. with monthly rest. It was also agreed between the Corporate Debtor and Nagar Urban Co-operative Bank, Ahmednagar and the Financial Creditor that out of sanctioned loan amount of Rs.13,98,00,000/-, the Financial Creditor shall directly pay Rs.9,75,12,150/- on behalf of the Corporate Debtor to the Bank of Baroda, Ahmednagar towards the payment of




Corporate Debtor's outstanding dues with the Bank of Baroda and remaining amount of Rs.4,22,87,850/- shall be paid to the Corporate Debtor. Accordingly, a sum of Rs.9,75,12,150/- was directly paid by financial creditor to Bank of Baroda, Ahmednagar by RTGS on 15.12.2015 and remaining amount has been disbursed to the Corporate Debtor from time to time.

7. The Corporate Debtor through its directors deceased Shantilal Pruthviraj Luniya and Smt. Lata Shantilal Lunlya have also executed consortium loan agreement dated 15.12.2015 in favour of the Financial Creditor and thereby accepted various terms and conditions, subject to which the said loan has been advanced by the Financial Creditor to the Corporate Debtor. The Corporate Debtor through its aforementioned directors had also executed a Deed of Hypothecation dated 15.12.2015 in favour of the Financial Creditor and as a security hypothecated tangible movable property including stock in trade, finished products, raw materials, furniture, fixtures, air conditioners, computers, etc. belonging to the Corporate Debtor.
8. The Corporate Debtor defaulted in payment of monthly interest regularly in respect of hypothecation loan and failed to repay principal amount and interest to the Financial Creditor. The Corporate Debtor also failed to pay monthly instalment regularly and monthly interest in respect of SSI Hypothecation Loan as well as the Machinery Loan.
9. The amount in default including interest under SSI hypothecation loan as on 31.01.2020 is Rs.8,84,94,435.85/-. The first default under this



facility occurred on 31/03/2018 and thereafter, the Corporate Debtor persistently defaulted and failed to pay the principal and the interest under this facility from 31<sup>st</sup> March, 2018. The amount in default under SSI Term Loan as on 31.01.2020 is Rs.1,59,66,883/-. The first default under this facility occurred on 15/02/2017. The Corporate Debtor defaulted and failed to pay the principal and the interest under this facility from 15<sup>th</sup> February, 2017. The amount in default under the Machinery Loan as on 31.01.2020 is Rs.1,63,20,483/-. The first default under this facility occurred on 15/02/2017 and thereafter, the Corporate Debtor defaulted and failed to pay the principal and the interest under this facility from 15<sup>th</sup> February, 2017. The total amount in default as on 31.01.2020 under the SSI Hypothecation Loan, SSI Term Loan and Machinery Loan collectively Rs.12,07,81,801.85/- (Rupees Twelve Crores, Seven Lakhs, Eighty-One Thousand, Eight Hundred and One and Eighty-Five Paise Only). Thus, the Corporate Debtor being principal debtor is liable to pay total Rs. 12,07,81,801.85/- to the Financial Creditor. Hence, the Petition.

10. It is pertinent to note that all the accounts of Corporate Debtor became Non-Performing Assets (NPA) and hence, the Financial Creditor issued notice dated 15.03.2019 through its Advocate Sharad B. Palod as per section 13(2) of the SARFAESI Act, 2002 and called upon Corporate Debtor to pay within a period of 60 days from the date of service of notice on the Corporate Debtor entire dues of INR 10,39,58,111.55/- to the Financial Creditor with interest from 01.03.2019 till the date of actual payment and an amount of Rs.5,35,17,602/- together with the Interest from 01.03.2019 to the Nagar Urban Co-operative Bank, Ahmednagar till the date of actual



payment The said notice is duly served on the Corporate Debtor and its directors and guarantors. However, they have miserably failed to comply with the same. As the Corporate Debtor had not paid the dues, ultimately on 11.11.2019, the Financial Creditor had taken the actual possession of the factory building and the premises situated at village Ghogargaon, Taluka: Shirgonda, District: Ahmednagar along with entire plant and the machinery, tools etc., which are mortgaged in favour of the Financial Creditor under the Deed or English Simple Mortgage dated 15.12.2015 followed by the Deed of English Simple Mortgage dated 03.10.2017 respectively exercising the powers under the SARFAESI Act, 2002. Neither stock nor raw material or finished goods were lying at the site at that time.

11. The Corporate Debtor did not file appear despite having been validly served and was proceeded against ex-parte vide Order dated 16<sup>th</sup> June, 2023.

### FINDINGS

12. We have heard the learned counsel for the Petitioner and gone through the records.
13. A perusal of the records reveal that three types of loans were disbursed by the Financial Creditor to the Corporate Debtor under a consortium loan agreement on 15<sup>th</sup> December, 2015 viz. Cash Credit (Hypothecation) of INR 6,50,00,000/-, Machinery Loan of INR 1,18,00,000/- and Term Loan of INR 1,30,00,000/-, aggregating to INR 8,98,00,000/- (Rupees Eight Crores and Ninety-Eight Lakhs



Only). The Corporate Debtor defaulted in repaying the Machinery Loan and the Term Loan on 15<sup>th</sup> February, 2017 and since the aforementioned debts remained unpaid for a continuous period of 90 days, the said loan accounts of the Corporate Debtor were classified as Non-Performing Assets by the Financial Creditor on 15<sup>th</sup> May, 2017. The present Company Petition was filed on 13<sup>th</sup> February, 2020. Thus, the financial debts appear to be within the period of limitation. The amount of total claim in respect of which the default has taken place and which still remain due and unpaid is Rs. 12,07,81,801.85/- (Rupees Twelve Crores, Seven Lakhs, Eighty-One Thousand, Eight Hundred and One and Eighty-Five Paise Only) as on 31<sup>st</sup> January, 2020 as per the statement of computation of amount of claim annexed to the Petition at Exhibit 6.

14. The Financial Creditor had issued notice dated 15.03.2019 through its Advocate Sharad B. Palod as per section 13(2) of the SARFAESI Act, 2002 and called upon Corporate Debtor to pay within a period of 60 days from the date of service of notice on the Corporate Debtor entire dues of INR 10,39,58,111.55/- to the Financial Creditor with interest from 01.03.2019 till the date of actual payment. However, the debts remained unpaid and consequently, the Financial Creditor took possession of the mortgaged assets of the Corporate Debtor.
15. The execution of loan documents between Financial Creditor and the Corporate Debtor as well as the certificate of registration of charge issued by the RoC at Exhibit 4 and Exhibit 8 respectively prove the existence of debt due and payable. The true and correct copy of statement of account annexed by the Petitioner at Exhibit 9 to the Petition and the Demand Notice dated 15<sup>th</sup> March, 2019 issued by the

Financial Creditor to the Corporate Debtor, prove the existence of default by the Corporate Debtor in repayment of the financial debts. Besides, the Corporate Debtor has neither appeared in this case nor any reply has been filed on its behalf. As a consequence, the averments made in the petition have gone uncontroverted and are deemed to have been admitted as correct by the Corporate Debtor.

16. From a perusal of the records and the documents relied upon by the Applicant, it stands proved that there has been a financial debt due and payable in respect of which default has been committed by the Corporate Debtor and further, that the application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code deserves to be admitted. It is ordered accordingly in the following terms:

### **ORDER**

- a. **The above Company Petition No. (IB) 580(MB)/2020 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Kohinoor Ginning and Pressing Private Limited**
- b. This Bench hereby **appoints CA. Fanendra Munot, Registration No: IBBI/IPA-001/IP-P00515/2017-18/10916 as the Interim Resolution Professional** having his registered office at 06<sup>th</sup> Floor, Mafatlal House Building, H.T. Parekh Marg, Behind



Mantralaya, Backbay Reclamation, Mumbai – 400020.

**Email :- [fhmunot@gmail.com](mailto:fhmunot@gmail.com)**, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rupees Five Lakhs (INR 5,00,000/-) only towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

**Accordingly, this Petition is admitted.**

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANURADHA SANJAY BHATIA  
(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**